

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 JOSE L. BERNAL, on behalf of) Case No. CV 15-01448 DDP (PLAx)
12 himself and all others)
13 similarly situated,)
14 Plaintiff,) ORDER GRANTING IN PART AND
15 v.) DENYING IN PART DEFENDANT FEDEX
16 FEDEX GROUND PACKAGE SYSTEM) GROUND PACKAGE SYSTEM INC.'S
17 INC., a Delaware) MOTION TO DISMISS PLAINTIFFS'
18 corporation; FEDEX) FIRST CAUSE OF ACTION FOR FRAUD
19 CORPORATION, a Delaware) AND/OR STRIKE PORTIONS OF
TRUCK REPAIR, INC., a) PLAINTIFFS' FIRST AMENDED
California corporation,) COMPLAINT PURSUANT TO FRCP RULES
Defendants.) 12(b)(6) and 12(f)
[Dkt. No. 23]

22 Presently before the Court is Defendant FedEx Ground Package
23 System, Inc. ("FedEx Ground")'s Motion to Dismiss Plaintiffs' First
24 Cause of Action for Fraud and/or Strike Portions of Plaintiffs'
25 First Amended Complaint. (See Dkt. No. 23.) Having considered the
26 parties' submissions and heard oral argument, the Court GRANTS the
27 motion to dismiss, GRANTS in part and DENIES in part the motion to
28 strike, and adopts the following order.

1 **I. BACKGROUND**

2 Plaintiffs, a group of 73 individuals, are current and former
 3 pickup truck drivers for FedEx Ground. (First Amended Complaint
 4 ("FAC"), Dkt. No. 15, ¶ 1.) Defendant FedEx Ground is a package
 5 shipping company and a subsidiary of Defendant FedEx Corporation.
 6 (Id. ¶ 2.) Plaintiffs allege that FedEx Ground and FedEx
 7 Corporation (collectively, "FedEx") "contracted and created various
 8 individuals and companies in California to misclassify Plaintiffs
 9 as independent contracts [sic] rather than employees." (Id. ¶ 3.)
 10 Plaintiffs allege that, as part of this alleged scheme, FedEx
 11 leased tractor vehicles from various individuals and companies in
 12 California. (Id. ¶ 4.) Plaintiffs name FedEx Ground, FedEx
 13 Corporation, and 32 of the aforementioned "individuals and
 14 companies" (the "Trucking Companies") as defendants in the FAC.

15 Plaintiffs bring this lawsuit on behalf of themselves and a
 16 putative class, defined in the FAC as "[a]ll persons who: 1) drove
 17 a tractor with a FedEx Ground logo which was leased to FedEx Ground
 18 Package, Inc. by other trucking companies; 2) received daily routes
 19 from terminals belonging to FedEx Ground Package, Inc located in
 20 California; 4) received a W2 or Paycheck from trucking companies;
 21 and 5) within the employment period from 2010 to the present day or
 22 date of judgment." (Id. ¶ 18.)

23 Plaintiffs allege that the Trucking Companies' primary
 24 business is leasing tractor vehicles to FedEx, which then uses the
 25 tractors to connect and transport trailers throughout the country.
 26 (Id. ¶ 5.) Plaintiffs allege that the Trucking Companies issue W-
 27 2s and paychecks to Plaintiffs, but that the Trucking Companies
 28 "have no other business purpose and merely serve as shell

1 companies, payroll or staffing companies" for FedEx. (Id.)
2 Plaintiffs allege that FedEx engaged in a fraudulent scheme to
3 misclassify Plaintiffs as independent contractors rather than
4 employees, and that FedEx conspired with the Trucking Companies to
5 carry out this scheme. (Id. ¶¶ 6, 9.)

6 Plaintiffs allege that they are employees of both the Trucking
7 Companies and FedEx. (Id. ¶ 9.) Plaintiffs allege that FedEx,
8 rather than the Trucking Companies, controlled the terms of their
9 employment and their pay, including "the method and calculation of
10 payments . . . by compensating Plaintiffs using a complex method
11 and system, and only for authorized routes and assignments." (Id.
12 ¶ 11.) Plaintiffs allege that the Trucking Companies'
13 relationship with FedEx should not have gone beyond the lease of
14 the tractors; instead, Plaintiffs allege, the Trucking Companies
15 improperly inserted themselves in Plaintiffs' employment
16 relationship with FedEx by (1) issuing W-2s and paychecks to
17 Plaintiffs and (2) assisting FedEx in hiring Plaintiffs. (Id. ¶
18 10.) Plaintiffs allege that FedEx "decided who to hire, terminate,
19 and suspend," and therefore, under California law, Plaintiffs
20 should have been classified as FedEx employees. (Id. ¶¶ 12, 13,
21 26.)

22 Plaintiffs further allege that FedEx's practices with respect
23 to Plaintiffs' daily routes and assignments violated California
24 employment and labor codes. (Id. ¶ 26.) Plaintiffs allege that
25 FedEx employees and dispatchers gave drivers their daily routes and
26 assignments at FedEx terminals, after which the drivers' tractors
27 would be connected to FedEx trailers in order to drive packages to
28 various terminals and hubs across the country. (Id. ¶ 27.) Once

1 drivers would reach their destination terminal, Plaintiffs allege
2 that FedEx would instruct drivers either to "drop and hook" new
3 trailers or to wait for the next assignment. (Id. ¶ 28.)
4 Plaintiffs allege that the wait time would often take hours or
5 days. (Id.) Plaintiffs allege that FedEx would request the
6 drivers run quick local routes while they waited for the next
7 assignment, and that if the drivers refused, they would be
8 retaliated against or terminated. (Id.) Plaintiffs allege that if
9 they returned home without waiting for a new route or assignment,
10 they were not compensated for the return mileage. (Id.)

11 Additionally, Plaintiffs allege that Defendants made false
12 statements in conjunction with Plaintiffs' employment that harmed
13 Plaintiffs. (Id. ¶ 49.) Plaintiffs allege that Defendants falsely
14 told Plaintiffs that (1) they would be employed and hired by FedEx,
15 and (2) that they were employed by FedEx. (Id. ¶ 50.) Plaintiffs
16 also allege that Defendants' representations to Plaintiffs included
17 a badge on which the FedEx logo was printed but that stated:
18 "NOTICE: The holder of this badge is a VENDOR to FedEx Ground. The
19 holder is not an employee of FedEx Ground. This badge is not to
20 be duplicated." (Id. ¶ 51 & Exh. E.) Plaintiffs further allege
21 that Defendants posted various job listings that clearly stated
22 that Plaintiffs would be working for FedEx. (Id. ¶ 52 & Exh. F.)
23 Plaintiffs also allege that FedEx made it appear as if the Trucking
24 Companies were the sole employers of Plaintiffs and instructed the
25 Trucking Companies to issue W-2s and paychecks to Plaintiffs,
26 despite the fact that Plaintiffs were employees of FedEx. (Id. ¶¶
27 58, 60.)

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1 Plaintiffs allege, that due to FedEx's misclassification of
2 Plaintiffs and FedEx's driver policies, Defendants violated various
3 California labor code provisions and committed fraud. Plaintiffs
4 TAC alleges ten causes of action against Defendants: (1) fraud; (2)
5 failure to pay earned wages, in violation of Labor Code § 204; (3)
6 failure to pay overtime wages, in violation of Labor Code § 1194;
7 (4) failure to provide meal periods, in violation of Labor Code §§
8 512,226.7, 204, and 1198; (5) failure to provide rest periods, in
9 violation of Labor Code §§ 226.7, 204, and 1198; (6) recovery of
10 deductions from wages, pursuant to Labor Code §§ 221 and 223; (7)
11 waiting time penalties, pursuant to Labor Code § 203; (8) failure
12 to provide accurate itemized statements, in violation of Labor Code
13 § 226; (9) unlawful, unfair and fraudulent business practices, in
14 violation of Business & Professions Code § 17200, et seq.; and (10)
15 violation of the Labor Code Private Attorneys General Act of 2004
16 and Labor Code § 2698.

17 Defendant FedEx Ground now moves to dismiss for failure to
18 state a claim Plaintiffs' first cause of action for fraud, and
19 further moves to strike portions of the FAC. (Dkt. No. 23.)

20 **II. LEGAL STANDARD**

21 A 12(b)(6) motion to dismiss requires the court to determine
22 the sufficiency of the plaintiff's complaint and whether or not it
23 contains a "short and plain statement of the claim showing that the
24 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under
25 Rule 12(b)(6), a court must (1) construe the complaint in the light
26 most favorable to the plaintiff, and (2) accept all well-pleaded
27 factual allegations as true, as well as all reasonable inferences
28 to be drawn from them. See Sprewell v. Golden State Warriors, 266

1 F.3d 979, 988 (9th Cir. 2001), amended on denial of reh'q, 275 F.3d
 2 1187 (9th Cir. 2001); Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th
 3 Cir. 1998).

4 In order to survive a 12(b)(6) motion to dismiss, the
 5 complaint must "contain sufficient factual matter, accepted as
 6 true, to 'state a claim to relief that is plausible on its face.'" " 7
Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (quoting Bell Atl.
 8 Corp. v. Twombly, 550 U.S. 544, 570 (2007)). However,
 9 "[t]hreadbare recitals of the elements of a cause of action,
 10 supported by mere conclusory statements, do not suffice." Iqbal,
 11 556 U.S. at 678. Dismissal is proper if the complaint "lacks a
 12 cognizable legal theory or sufficient facts to support a cognizable
 13 legal theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d
 14 1097, 1104 (9th Cir. 2008); see also Twombly, 550 U.S. at 561-63
 15 (dismissal for failure to state a claim does not require the
 16 appearance, beyond a doubt, that the plaintiff can prove "no set of
 17 facts" in support of its claim that would entitle it to relief). A
 18 complaint does not suffice "if it tenders 'naked assertion[s]'
 19 devoid of 'further factual enhancement.'" Iqbal, 556 U.S. at 678
 20 (quoting Twombly, 550 U.S. at 556). "A claim has facial
 21 plausibility when the plaintiff pleads factual content that allows
 22 the court to draw the reasonable inference that the defendant is
 23 liable for the misconduct alleged." Id. The Court need not accept
 24 as true "legal conclusions merely because they are cast in the form
 25 of factual allegations." Warren v. Fox Family Worldwide, Inc., 328
 26 F.3d 1136, 1139 (9th Cir. 2003).

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1 **III. DISCUSSION**2 **A. Motion to Dismiss**

3 FedEx Ground argues that Plaintiffs' fraud claim should be
 4 dismissed because it is predicated on alleged misrepresentations of
 5 law, which cannot form the basis of a claim for fraud. Plaintiffs
 6 contend that they do allege FedEx Ground made misrepresentations of
 7 fact - specifically, that FedEx Ground falsely stated that the
 8 staffing and work assignments for drivers would be established by
 9 the contractor Trucking Companies and not FedEx Ground. Plaintiffs
 10 also argue that the badge given to the drivers was misleading,
 11 since it had a FedEx logo and bar code, and therefore led drivers
 12 to believe they worked for FedEx.

13 Misrepresentations of law cannot form the basis for a fraud
 14 claim. See Miller v. Yokohama Tire Corp., 358 F.3d 616, 621 (9th
 15 Cir. 2004). Statements of law are "normally regarded as
 16 expressions of opinion which are generally not actionable in fraud
 17 even if they are false." Id. However, reliance on
 18 misrepresentations of law could form the basis of an actionable
 19 fraud claim when the party making the representation: "1) purports
 20 to have special knowledge; 2) stands in a fiduciary or similar
 21 relation of trust and confidence to the recipient; 3) has
 22 successfully endeavored to secure the confidence of the recipient;
 23 4) or has some other special reason to expect that the recipient
 24 will rely on his opinion, misrepresentations of law may result in
 25 actionable fraud." Id.

26 As an initial matter, none of the four exceptions to the rule
 27 in Miller appear to be present here. Plaintiffs have not alleged
 28 that FedEx purported to have some special knowledge, and the Court

1 cannot see how FedEx would have some special knowledge of
2 employment law in this context. Plaintiffs similarly have not
3 alleged that Defendants stood in a fiduciary relationship with
4 Plaintiffs or that Defendants "endeavored to secure the confidence"
5 of any of the Plaintiffs. Finally, Plaintiffs have not alleged
6 that Defendants had a special reason to expect that any of the
7 Plaintiffs would rely on the alleged misrepresentations. All of
8 the relationships alleged in the FAC would appear to the Court to
9 be standard employee/employer or contractor/employer relationships.

10 Furthermore, the alleged misrepresentations in the FAC appear
11 to be misrepresentations of law. The alleged misrepresentations in
12 the FAC fall seemingly into two categories of misrepresentations
13 that form the basis of the alleged fraud: (1) Defendants misled
14 Plaintiffs in materials stating that Plaintiffs were contractors,
15 because Plaintiffs were in actuality employees of FedEx; and (2)
16 Defendants misled Plaintiffs to believe they were employed by FedEx
17 when in fact they were employed by the independent Trucking
18 Companies. These allegations appear to be self-contradictory.
19 Plaintiffs cannot have it both ways; they cannot argue on one hand
20 that the fraud was committed when FedEx lied to them by convincing
21 them they were hired and employed by FedEx, while at the same time
22 arguing that the fraud was based on misrepresentations that
23 Plaintiffs were contractors when in fact they should have been
24 classified as employees.

25 As for the first category of misrepresentations, the Court
26 concludes that these are misrepresentations of law, not fact. A
27 statement that an individual is a contractor, vendor, or an
28 employee of a contractor, is a statement of law. See Harris v.

1 Vector Mktg. Corp., 656 F. Supp. 2d 1128, 1136 (N.D. Cal. 2009)
2 (stating that under federal and state law, the legal conclusion of
3 whether workers are employees or independent contractors is a
4 question of law). Therefore, although the facts may ultimately
5 show that Plaintiffs were misclassified as contractors rather than
6 employees, a misrepresentation by Defendants that Plaintiffs were
7 employed by the Trucking Companies could not form the basis of a
8 fraud claim.

9 As for the second category of misrepresentations, the FAC does
10 not allege facts that support Plaintiffs' contention that FedEx
11 Ground told Plaintiffs they would be employed by FedEx. The FAC
12 references a badge that has the FedEx logo; however, the FAC also
13 alleges that the badge (an image of which is attached to the FAC as
14 Exhibit E) clearly states that the bearer is a "vendor" of FedEx
15 and disclaims that the bearer is an employee. Furthermore, the
16 Craigslist ad attached as Exhibit F to the FAC states that a "FedEx
17 ground contractor" is hiring, not FedEx itself. (FAC ¶ 52 & Exh.
18 F.)

19 **B. Motion to Strike**

20 FedEx Ground also moved to strike portions of the FAC. First,
21 FedEx Ground requested that the Court strike Item 11 in the "Prayer
22 for Relief," which pertains to Plaintiffs' request for punitive
23 damages with respect to the fraud claim. (See FAC at 34.) Second,
24 FedEx Ground requests that the Court strike the portion of the
25 class definition that includes individuals who were employed "from
26 2010," arguing that the longest statute of limitations for any of
27 Plaintiffs' claims reaches back only to July 22, 2010. (See id. ¶
28 18.)

1 Because Plaintiffs do not oppose the motion to strike the
2 "from 2010" portion of the class definition, the Court GRANTS the
3 motion to strike this language from the FAC. Because the Court is
4 dismissing Plaintiffs' fraud claim with leave to amend, the Court
5 DENIES the motion to strike Plaintiffs' request for punitive
6 damages as moot.

7 **IV. CONCLUSION**

8 For the foregoing reasons, FedEx Ground's motion to dismiss is
9 GRANTED without prejudice. The motion to strike is GRANTED in part
10 as to the date portion of the class definition and DENIED as to the
11 request for punitive damages.

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14 IT IS SO ORDERED.

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17 Dated: July 14, 2015

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DEAN D. PREGERSON
United States District Judge